IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 398 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

THAKOREBHAI KANJIBHAI PARMAR

Appearance:

MR.B.D. DESAI, A.P.P.for Petitioner

MR NA SHAIKH for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 18/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. The acquittal of the respondents of the offences punishable under Section 161 read with Section 34 of Indian Penal Code and Sections 5 (1) (d) of the Prevention of Corruption Act, recorded by the learned Special Judge, vide judgement dated April 30, 1988 rendered in special case No.4/84 is subject matter of challenge in the present appeal which is filed under Section 378 of the Code of Criminal Procedure.

2. Complainant Ramabhai Somabhai is resident of old village Sakkarpur, Taluka Ankleshwar, District Bharuch. He was Chairman of Nav Chetan Backward Class Community Co-operative Society Limited; whereas respondent No.2 was Secretary of the said Society. In the year 1984, respondent No.1 was holding the office of the Talati cum Mantri of village Sakkarpur, Taluka Ankleshwar, District Bharuch. The complainant wanted loan of Rs.1 lac from State Co-operative Land Development Bank, Ankleshwar, for the purpose of purchasing a tractor and was willing to pledge agricultural lands bearing survey Nos.305 and 380 situated at village Sakkarpur. The application for loan was processed and it was found that the pledge offered was not sufficient for the purpose of grant of loan and, therefore, the complainant was asked to pledge other lands. The complainant and his brother were also owning land bearing survey Nos.155 and 193 situated at village Sakkarpur and, therefore, for the purpose of obtaining Revenue Record i.e. village Forms No.6, 7/12 and 8 (A), the complainant had made an application to respondent No.1. According to the complainant respondent No.1 was not supplying the demanded certified copies and was delaying the supply of those copies on false pretexts. The complainant has claimed that on April 23, 1984, he in the company of respondent No.2 went to the office of Panchayat and asked respondent No.1 to supply certified copies of revenue record relating to survey Nos.155 and 193, but respondent No.1 demanded Rs.400/- by way of illegal gratification. According to the complainant, at that time he had no money and therefore he informed respondent No.1 that he would give the amount after making necessary arrangement. What is claimed by the complainant is that respondent No.1 asked the complainant to come to panchayat office on April 25, 1984 any time between 11.00 a.m. to 4.00 p.m. and take the certified copies of Revenue Records after payment of Rs.400/-. Thereafter, the complainant in the company of respondent No.2 went to District Co-operative Bank, Ankleshwar where the account of Nav Chetan Backward Class Community Co-operative Agricultural Society is being maintained and withdrew Rs.1,000/- with the help of respondent No2. The complainant was of the opinion that he was an educated

man and demand of illegal gratification from him was not justified. He therefore, went to the office of Anti Corruption Bureau, Bharuch on April 25, 1984 and lodged complaint with inspector of A.C.B. at about 11.10 a.m. After registration of the complaint was over, the panch witnesses were summoned and in their presence the complainant had produced four notes each of denomination of Rs.100/- which were smeared by constable Ramdas with anthracene powder and experiment with ultraviolet lamp was conducted. Thereafter, on instructions of the Inspector, Head Constable Ramdas had placed currency notes smeared with anthracene powder in the pocket of the complainant, and complainant was instructed to hand over the same to respondent No.1 on demand being made. After necessary instructions, first part of the panchnama was concluded at the A.C.B. office and, thereafter the complainant in the company of panch No.1 had gone to the office of respondent No.1 followed by other members of the raiding party. The prosecution has claimed that the complainant had introduced panch No.1 to respondent No.1 as his relative and demanded certified copies of the Revenue Record pertaining to survey Nos.155 and 193, but respondent No.1 had asked the complainant to wait till 4.00 p.m. Meanwhile, one Melabhai Chagganbhai had paid an amount of Rs.535/- to respondent No.1 and after issuance of receipt by respondent No.1 to Melabhai, the complainant had again demanded the certified copies of Revenue Records and at that time respondent No.2 who had also come to the office had signed to the complainant to make the payment of illegal gratification; whereas respondent No.1 had demanded the illegal gratification and, therefore, the complainant had taken out currency notes smeared with anthracene powder from his pocket and offered the same to respondent No.1, but respondent No.1 had asked the complainant to hand over the amount to respondent No.2 and, therefore, the complainant had handed over the currency notes to respondent No.2. According to the prosecution, on signal being given, other members of the raiding party had rushed in and panch No.1 at the instance of the inspector A.C.B. had recovered the currency notes smeared with anthracene powder from respondent No.2. After tallying the numbers of notes with the numbers mentioned in first part of panchnama, experiment with ultraviolet lamp was conducted and second part of the panchnama was concluded at Panchayat office. Thereafter, further investigation into the case was made by inspector Bhimsinh Vasava. Sanction to prosecute respondent No.1 was obtained and at the conclusion of the investigation the respondents were chargesheeted for the offences punishable under Section 161 read with Section 34 I.P.C. and Sections 5 (1) (d)

of the Prevention of Corruption Act. Charge at Exh.9 was framed by the learned Special Judge, Bharuch, against the respondents. The charge was read over and explained to the respondents who pleaded not guilty to the same and claimed to be tried. Therefore, in all, five witnesses were examined by the prosecution to prove its case against the respondents. They were ; (1) Ramabhai Somabhai as P.W.1 at Exh.27, (2) Melabhai Chhaganbhai as P.W.2 at Exh.28, (3) Dashrathbhai P. Panchal as P.W.3 at Exh.29, (4) Dineshchandra Damodar Mehta as P.W.4 at Exh.30 and (5) P.I. A.C.B. Mr.Bhimsinh S. Vasava as P.W.5 at Exh.32. Documentary evidence such as complaint filed by Ramabhai, sanction to prosecute respondent No.1, panchnama etc., was also produced by the prosecution to prove its case against the respondents. After recording of evidence of prosecution witnesses was over, statements of the respondents were recorded by the learned Special Judge as required by Section 313 of the Code of Criminal Procedure. In their further statements, the respondents claimed that the case of prosecution against them was false, but did not examine any witness in support of their defence. On appreciation of evidence led by the prosecution, the learned Judge has disbelieved the case against the respondents and acquitted them by judgement dated January 30, 1988, giving rise to the present appeal.

3. Mr.B.D. Desai, learned A.P.P. after taking us through the entire evidence on record submitted that the case of demand of illegal gratification from the complainant on April 23, 1984, is satisfactorily proved by reliable evidence of the complainant which is corroborated in material particulars by his complaint and therefore case of demand of illegal gratification by respondent No.1 on April 23, 1984 ought to have been believed by the learned Special Judge. According to the learned counsel for the State, on April 25, 1984, respondent No.1 had demanded illegal gratification; whereas at his instance respondent No.2 had accepted the illegal gratification and, therefore, the respondents ought to have been convicted of the offences with which they were charged. What was claimed by the learned counsel for the appellant was that the learned Special Judge has misread the evidence adduced by the prosecution and disbelieved the case on the basis of the minor contradictions appearing in the evidence of complainant which is not proper and, therefore, the appeal should be accepted.

4. Mr.N.A. Shaikh, learned counsel for the respondents, submitted that evidence of witness

Dashrathbhai P. Panchal P.W.3 Exh.29 who was agent of Gujarat State Land Development Bank, Ankleshwar indicates that the complainant had instructed the bank not to process his application dated April 16, 1984 which was made for loan and therefore the case of the prosecution that respondent No.1 had demanded illegal gratification for supply of certified copies of revenue records relating to survey Nos.155 and 193 becomes doubtful. According to the learned counsel for the defence, though the alleged demand was made by respondent No.1 for the first time on April 23, 1984, nothing was done by the complainant either on that day or on the day following, but had filed the complaint only on April 25, 1984 and as delay in filing the complaint is not explained at all by the complainant, the whole case put forward by the prosecution does not appear to be probable. What was stressed was that the evidence on record does not establish that respondent No.2 who was Secretary of the Society was also privy to the ill design of respondent No.1 in accepting the bribe amount and complainant having flouted the directions of P.I. by giving bribe amount to respondent No.2 is rightly disbelieved by the learned Special Judge in absence of independent corroboration to his evidence. After referring to the evidence of the complainant in detail, the learned counsel for the respondents urged that respondent No.2 had accepted the amount of Rs.400/- from the complainant because the same was required to be given to respondent No.1 towards arrears of land Revenue in respect of lands of the Society and, therefore, the learned Judge did not commit any error in acquitting the respondents. Lastly, it was emphasized that even if second view of the matter is possible this Court should not interfere with the acquittal recorded by the learned Special Judge and the appeal should be dismissed.

5. We have taken into consideration the submissions advanced at the bar and the record of the case. The evidence of complainant Ramabhai would indicate that he had made an application to Gujarat State Cooperative Land Development Bank, Ankleshwar for obtaining loan and that he was asked to pledge more agricultural land by way of security. However, the evidence of Dashrathbhai P. Panchal, who was agent of Gujarat State Cooperative Land Development makes it evident that within a week from the date of making of application, the complainant had come to the office of the bank and not pressed his application for loan. Thus, the case of the complainant that he was required to obtain certified copies of Revenue Records relating to survey Nos.155 and 193 of village Sakkarpur for the purpose of producing them before the bank so as

to obtain loan becomes doubtful. From the evidence of complainant Ramabhai it is evident that on April 23, 1984, he in the company of respondent No.2 had gone to Ankleshwar Branch, Bharuch District Cooperative Bank and withdrawn Rs.1,000/- and informed respondent No.2 that the amount was to be paid towards arrears of land Revenue. The evidence on record does not establish at all that there was previous meeting of mind between respondent No.1 and respondent NO.2 and that respondent No.2 had agreed to accept the amount of illegal gratification from the complainant on behalf of respondent No.1. Under the circumstances, the case of respondent No.2, that he had accepted the amount towards arrears of land Revenue to be paid to respondent No.1 becomes probable. Further, the complainant has not offered any explanation as to why he had lodged complaint with P.I. A.C.B. on April 25, 1984 though initial demand of illegal gratification was made from him by respondent No.1 on April 23, 1984. This non-explanation of delay may strengthen the case of the defence that the whole case against respondent No.1 was cooked up by the complainant. As far as evidence of Panch No.1 Dineshchandra Mehta is concerned, we find that this witness has not stated a word before the Court that in his presence experiment of ultra violet lamp was conducted either on the hands of complainant or on his hands or on the hands of respondent No.1. Thus, in material particulars the evidence of complainant does not get corroboration from so called independent witness. The complainant in his evidence stated that on demand of illegal gratification being made, he had taken out currency notes smeared with anthracene powder by his right hand and handed over the same in the left hand of respondent No.2; whereas panch witness has stated that the complainant had taken out currency notes by his left hand and handed over the same to respondent No.2. Initially the complainant maintained before the Court that he had gone to the office of A.C.B. at about 9.30 a.m. on April 25, 1984, but in order to suit the time of recording of the complaint as mentioned in the complaint itself, he changed the story next day and maintained before the Court that he had gone to the office of A.C.B. at about 10.00 a.m. in the morning where his complaint was recorded. What is important is that at the time when complainant had gone to the office of respondent No.1 in the company of panch No.1, respondent No.2 was not present and had come to the office subsequently. The complainant has claimed in his evidence that respondent No.1 had demanded the amount and if that case is believed, there is no reason, why respondent No.1 himself should not accept the amount of illegal gratification,

and should ask the complainant to hand over the bribe money to respondent No.2. There are several discrepancies in the prosecution case which have been noticed by the learned Judge in paragraphs 9 to 25 of the impugned judgment. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case pointed out by the learned Judge go to the root of the matter and strike a vital blow on the prosecution case. In such a case it would be safe to set aside the order of acquittal more particularly, when the evidence has not inspired confidence of learned Judge who had opportunity to observe the demeanour of witnesses. As we are in general agreement with the view expressed by the learned Judge. We do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Trial Court, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decision rendered by the Supreme Court in the case (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, A.I.R. 1967, S.C. 1124, and (2) State of Karnataka v. Hema Reddy and anothers, A.I.R. 1981 S.C.1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodged the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge

For the foregoing reasons the appeal fails and is dismissed. Mudammal articles to be disposed of in terms of directions given by the learned Judge in the impugned judgement.

(J.M. Panchal, J).

(S.D. Dave, J).

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